

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

DALE BENNETT,	:	APPEAL NO. C-120509
	:	TRIAL NO. A-1009304
Plaintiff-Appellant,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
USI MIDWEST INSURANCE, INC.,	:	
Defendant-Appellee,	:	
and	:	
WESTFIELD INSURANCE COMPANY,	:	
Defendant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

In one assignment of error, plaintiff-appellant Dale Bennett appeals the decision of the trial court granting the motion for summary judgment of defendant-appellant USI Midwest Insurance, Inc.. We affirm.

In 1991, Bennett purchased insurance coverage for his commercial property through a predecessor of USI Midwest. The policy stated that the replacement value of the property was \$201,000. The policy also included an “inflation guard” endorsement to cover the possibility that the replacement value would go up over time, up to 4 percent. It also carried a “coinsurance” provision, which applied as a penalty in the event that the property should be underinsured. The policy was renewed every year after that. In 2010, the property was destroyed by fire. When Bennett presented his claim to defendant Westfield Insurance Company, he was informed that he would be reimbursed for what he believed was only a portion of the property’s worth.

Bennett filed suit claiming that USI Midwest negligently misrepresented the amount and type of coverage he had on the property, had committed fraud by selling him less coverage than what was necessary to cover the loss, had been negligent when it acquired the coverage for him, and had induced him into purchasing the insurance by fraud. After discovery concluded, USI Midwest sought and received summary judgment in its favor as to all claims against it.

Pursuant to Civ.R. 56(C), a motion for summary judgment may be granted only when no genuine issue of material fact remains to be litigated, the moving party is entitled to judgment as a matter of law, and it appears from the evidence that reasonable minds can come to but one conclusion, and, with the evidence construed most strongly in favor of the nonmoving party, that conclusion is adverse to that party. *See State ex rel. Howard v. Ferreri*, 70 Ohio St.3d 587, 589, 639 N.E.2d 1189 (1994). The party moving for summary judgment bears the initial burden of demonstrating that no genuine issue of material fact exists, and once it has satisfied its burden, the nonmoving party has a reciprocal burden to set forth specific facts showing that there is a genuine issue for trial. *See Drescher v. Burt*, 75 Ohio St.3d 280, 293, 662 N.E.2d 264 (1996). This court reviews the granting of summary judgment de novo. *Jorg v. Cincinnati Black United Front*, 153 Ohio App.3d 258, 2003-Ohio-3668, 792 N.E.2d 781, ¶ 6.

The limitations period for negligent misrepresentation and negligence is four years. R.C. 2305.09; *see, Syphard v. Peterson/Accordia*, 7th Dist. No. 09 MA 151, 2010-Ohio-6501. The only conduct that Bennett could cite to support his claims for negligent misrepresentation and negligence occurred when the policy was originally purchased in 1991. Bennett has no recollection of the content of any of the conversations that occurred during the annual reviews of the policy. The best he can do is, in his brief, note that he “would not have purchased the insurance if USI had not made continual assertions that any loss he suffered on the property would be

fully replaced. That assertion can be inferred by Bennett's repeated renewals of the policy * * *." But this speculative assertion is insufficient to meet his reciprocal duty to produce evidence to support his claims under *Dresher v. Burt*.

We likewise find that the fraud-based claims are barred by the same limitations period. Unlike the negligence claims, the limitation period on the fraud-based claims can be tolled under the discovery rule. See *Investors REIT One v. Jacobs*, 46 Ohio St.3d 176, 546 N.E.2d 206 (1989). But, everything that Bennett needed to discover the fraud he alleged was sent to him every year with the policy renewal. See, e.g., *RBS Citizens, N.A. v. Zigdon*, 8th Dist. No. 93945, 2010-Ohio-3511, ¶ 46 (discovery rule did not toll the limitations period when all of the information needed to allege fraud was available); *Foster v. Wells Fargo Fin. Ohio, Inc.*, 195 Ohio App.3d 497, 2011-Ohio-4632, 960 N.E.2d 1022, ¶ 13 (8th Dist.) (same).

After a review of the record, we conclude that the trial court properly granted USI Midwest's motion for summary judgment. Bennett's sole assignment of error is overruled, and we affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., HILDEBRANDT and DINKELACKER, JJ.

To the clerk:

Enter upon the journal of the court on June 28, 2013

per order of the court _____.
Presiding Judge